

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
JULY 17, 2008 Session

ERNESTINE C. RIDLEY v. CLEMONS WATSON, ET AL.

Direct Appeal from the Chancery Court for Davidson County
No. 03-3240-III Ellen Hobbs Lyle, Chancellor

No. M2007-01241-COA-R3-CV - Filed August 22, 2008

This is a partition case between tenants in common. Appellant herein maintained sole possession of the property, although Appellee was not excluded from the property, and did not abandon her interest. Appellee sought partition, reimbursement for rents, and reimbursement for Appellee's use of the property. Appellant counter-claimed for reimbursement for improvements to and maintenance of the property, and for reimbursement for loans that Appellant, in his sole discretion, had made. The trial court granted the partition and ordered that: (1) the remaining mortgage debt be paid out of Appellant's share, (2) Appellant was entitled to \$10,000 reimbursement for maintenance and repairs to the property, (3) Appellee was not entitled to rents, (4) Appellee was not entitled to reimbursement for Appellant's sole use of the property, and (5) responsibility for the tax liens on the property and penalties thereon should be equally divided between the parties. Finding no error, we affirm

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery Court Affirmed

J. STEVEN STAFFORD, J., delivered the opinion of the court, in which ALAN E. HIGHERS, P.J., W.S., and HOLLY M. KIRBY, J., joined.

Thomas F. Bloom, Nashville, TN, Appellant

L. Johnston Ellis, IV, Nashville, TN, Appellee
John R. Miles, Nashville, TN, Appellee

OPINION

In 1974, Appellee Ernestine C. Ridley and her then-husband, Charles R. Hooten acquired a fee simple interest in the property known as 1101 Paris Avenue, Nashville, Tennessee. Ms. Ridley

and Mr. Hooten were divorced in November 1976.¹ Following the divorce, Ms. Ridley moved from the property and Mr. Hooten continued to live there. In 1991, Appellant Clemons Watson began looking after the elderly Mr. Hooten. In 1995, Mr. Hooten's condition was such that Mr. Watson moved in with Mr. Hooten to provide constant care. In September 1998, Mr. Hooten executed a quitclaim deed on the property in favor of Mr. Watson. As a result of this transfer, Ms. Ridley and Mr. Watson became owners, as tenants in common, of the property. Shortly after the transfer of title, Mr. Hooten died and Mr. Watson retained sole possession of the property.

After he received an ownership interest, Mr. Watson used the property to secure six loans. All of the loan documentation, promissory notes, and deeds of trust were executed by Mr. Watson alone. There is no indication that Ms. Ridley was aware of these encumbrances on the property until the commencement of this case.²

On October 30, 2003, Ms. Ridley filed a complaint against Mr. Watson seeking to quiet title, to partition the property, and for a judgment for one-half of the rents allegedly paid to Mr. Watson.³ The matter was referred to a Special Master. The Master's report of January 20, 2004 indicates that, in November 2001, Mr. Watson filed for bankruptcy, and that the action was still active and ongoing. Consequently, and upon the Master's recommendation, Ms. Ridley's suit was stayed pending the outcome of Mr. Watson's bankruptcy case. Ms. Ridley then petitioned the Bankruptcy Court for relief from the automatic stay. In October 2004, the Bankruptcy Court entered an agreed order allowing Ms. Ridley to pursue her case in Chancery Court. Thereafter, Ms. Ridley filed a motion to reopen the case which was granted by the trial court.

On April 28, 2005, Mr. Watson answered the complaint and filed a counter-complaint against Ms. Ridley. In his counter-complaint, Mr. Watson alleges that Ms. Ridley had failed to contribute to the maintenance of the property, had paid no insurance, nor any taxes, and had, in effect, abandoned the property in 1976. Based upon the abandonment assertion, Mr. Watson asked the court to dismiss Ms. Ridley's petition, and to award him sole interest in the property. In June 2005, Ms. Ridley answered the counter-complaint, denying that she had abandoned the property.

On April 24, 2006, Ms. Ridley filed a motion for summary judgment against Mr. Watson.⁴ By order of June 9, 2006, the trial court granted Ms. Watson's motion for summary judgment and

¹ The Final Decree of Divorce does not address ownership of the disputed property.

² There is no indication in the record as to how or why Mr. Watson was able to encumber the property without the approval and/or knowledge of Ms. Ridley.

³ The Complaint also names American General Finance, Inc., Associates Home Equity Services, Inc., R.E.L.S., and C.B. Tilford as party defendants. CitiFinancial Mortgage Company, Inc. is the successor in interest to Associates Home Equity Services, Inc. An agreed order dismissing CitiFinancial and C.B. Tilman was entered on June 19, 2006. American General Finance's claim was adjudicated in the final order. Mr. Watson is the sole appellant in this cause.

⁴ Mr. Watson filed a motion for summary judgment in December 2005. However, on April 20, 2006, he notified the court that he was striking that motion.

dismissed Mr. Watson's counter-complaint. Based upon Mr. Watson's sworn bankruptcy petition, the trial court found that he was judicially estopped from denying Ms. Ridley's one-half ownership interest in the property. All other issues were reserved for later hearing.

The matter was again referred to a Special Master for findings concerning ownership, encumbrances, value, and partition. The Master found that the parties were co-tenants in the property, valued the property and encumbrances, and recommended that the property was ripe for partition.⁵ Subsequently, the trial court held an evidentiary hearing which resulted in the entry of a memorandum and order on April 18, 2007. The trial court ordered that the property be sold for partition and that the monies be distributed, in pertinent part, as follows:

4. After deducting taxes and court costs from the sale proceeds, the remainder shall be divided in half, one-half designated as "Ridley Half" and the other as "Watson Half."
5. Out of the Watson Half, the Clerk and Master shall pay the mortgage of American General Finance, in the amount of \$59,317.00. Following the payment of that mortgage, the monies left shall be paid to defendant Watson.
6. Out of the Ridley Half, \$10,000.00 shall be paid to defendant Watson for maintenance and upkeep of the property. Following the payment of \$10,000.00 from the Ridley Half to defendant Watson, the monies left shall be paid to plaintiff Ridley.

The trial court denied Ms. Ridley's claim for rents, and denied Mr. Watson's claim for expenditures over and above the \$10,000.00 awarded.

Mr. Watson appeals and raises one issue for review as stated in his brief:

Whether the trial court erred in awarding Defendant Clemons Watson only \$10,000.00 on his contribution claim against his co-tenant, Plaintiff Ernestine C. Ridley.

In the posture of appellee, Ms. Ridley asserts that:

1. Mr. Watson should pay all taxes and penalties incurred after he filed this appeal.

⁵ By the date of the final hearing in this case, only the American General Finance, Inc. mortgage remained unsatisfied. At that time, the debt was \$59,317.00.

2. The trial court erred in allowing Mr. Watson the \$10,000.00 credit as the evidence does not support the award.
3. The trial court erred in denying Ms. Ridley one-half of the rents.
4. The trial court erred in denying Ms. Ridley a fair compensation for Mr. Watson's use of the property.

Because this case was tried by the court sitting without a jury, we review the case *de novo* upon the record with a presumption of correctness of the findings of fact by the trial court. Unless the evidence preponderates against the findings, we must affirm, absent error of law. *See* Tenn. R. App. P. 13(d). "For the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater convincing effect." *Watson v. Watson*, 196 S.W.3d 695, 701 (Tenn. Ct. App. 2005). Furthermore, when the resolution of the issues in a case depends upon the truthfulness of witnesses, the trial judge who has the opportunity to observe the witnesses and their demeanor while testifying is in a far better position than this Court to decide those issues. *See McCaleb v. Saturn Corp.*, 910 S.W.2d 412, 415 (Tenn.1995); *Whitaker v. Whitaker*, 957 S.W.2d 834, 837 (Tenn.Ct.App.1997). The weight, faith, and credit to be given to any witness's testimony lies in the first instance with the trier of fact, and the credibility accorded will be given great weight by the appellate court. *See id.*; *see also Walton v. Young*, 950 S.W.2d 956, 959 (Tenn.1997).

Where jointly held property is sold, the sale proceeds are to be divided between the parties in accordance with their rights as determined by the court. Tenn.Code. Ann. § 29-27-217 (2005); *see also* Tenn.Code. Ann. § 29-27-113 (2005). "[T]he Court has a statutory and inherent right to adjust the equities and settle all claims between or among the parties...." *Yates v. Yates*, 571 S.W.2d 293, 296 (Tenn.1978). In *Parker v. Lambert*, 206 S.W.3d 1 (Tenn. Ct. App. 2006), this Court addressed the principles that the trial court should apply in arriving at the equitable distribution of monies from a partition sale:

There are five primary principles governing compensation in the partition context. First, the courts will compensate a cotenant who improved the jointly owned property as long as the improvements enhanced the property's value. Generally, the amount of this compensation cannot exceed the amount by which the improvements enhanced the land's value. Second, cotenants must equally contribute to satisfying encumbrances on the property. Third, cotenants must also equally contribute to expenses for necessary repairs and maintenance of the jointly owned property. However, "a cotenant is not entitled to credit for the value of personal services in managing and caring for the property," unless the cotenants have an agreement to the contrary. Fourth, a cotenant with sole possession of the property is liable to other cotenants for any profits received in excess

of his or her pro rata share. Fifth, a cotenant with sole possession of the property who has excluded his or her cotenants from the property or who has denied their title to any part of the property, must pay rent to the cotenants for the use and occupation of the property regardless of the profits received. (internal citations omitted)

Id. at fn. 2.

\$10,000 Award for Improvements to Property

Mr. Watson seeks contribution from Ms. Ridley from 1976 through the present. Specifically, Mr. Watson claims that he acquired all right, title, and interest (whether legal or equitable) that Mr. Hooten had from the time Ms. Ridley left the property. Ms. Ridley asserts that Mr. Hooten's right to contribution was a personal right, which did not transfer to Mr. Watson via the quitclaim. Consequently, she contends that Mr. Watson is only entitled to contribution on those expenditures that he can prove were made during his ownership (i.e., from 1998 through the present). However, because of the lack of evidence in this record, we are not required to determine whether a co-tenant grantor's right to contribution can be transferred to a third-party grantee.

At oral argument, Mr. Watson's attorney requested that this Court remand the case to the trial court for the purpose of adducing more proof as to the expenditures made by Mr. Hooten in upkeep, maintenance, and improvements to the property. We have reviewed the entire record in this case and find that the trial court showed an abundance of deference to Mr. Watson in allowing all evidence that he proffered, which evidence included claims for contribution for expenditures made from 1974 through the date of the hearing. Although Mr. Watson was allowed the opportunity to prove his claim of \$68,416.27 in maintenance, repairs, and improvements, the problem, as Mr. Watson's attorney candidly admitted at oral argument, is with the proof itself.

It is well settled that, although a co-tenant is entitled to recoup a portion of the monies expended on upkeep and improvements to a jointly owned property, *Parker*, 206 S.W.3d at fn.2, these expenditures must be supported by the proof. Trial Exhibit 20 is a list of repairs and improvements allegedly made from 1974 to the hearing date. This proof is speculative at best. Regardless of when these repairs were made (i.e., before or after Mr. Watson obtained his ownership interest), the amounts listed are not supported by any documentation. Mr. Watson's testimony does nothing to clear up the speculative nature of these claims. In short, if Mr. Watson had proof to support his claims, then he should have presented that proof at the hearing. Moreover, some of the items contained in Exhibit 20 were for Mr. Watson's personal maintenance services. Under *Parker*, the personal services provided by a co-tenant cannot be recouped from another co-tenant absent agreement. Based upon the proof adduced regarding Exhibit 20, we cannot conclude that the evidence preponderates against the trial court's decision not to allow reimbursement for these claims.

The proof in the record does support the claim for roof repairs in the amount of \$2,966.20. Aside from this documented item, the trial court was left with a record full of speculative claims.

From our review, we conclude that Mr. Watson was not precluded from offering any and all proof that he may have had to support his claims. Simply put, the problem is not with the trial court's exclusion of the proof; the problem is that there is no proof, otherwise Mr. Watson would have provided it. Consequently, remand for more proof would only give Mr. Watson a second bite at the proverbial apple. This is not the purpose of appellate review.

Partition, by its nature, requires the court to weigh the equities between the parties against the proof provided. In fact, the court has a statutory duty to determine the equities between parties. Tenn. Code Ann. § 29-27-217. Because of the evidentiary problems in this case, the trial court had to base the bulk of its decision on the equities. In so doing, the trial court ruled that Mr. Watson was entitled to \$2,000 per year of ownership, for a total of \$10,000. Considering the facts in the record, the length of Mr. Watson's occupancy of the home, and the absence of Ms. Ridley from the property, we cannot conclude that the evidence or equities preponderate against the trial court's determination that Ms. Ridley should be responsible for \$10,000 in contribution for improvements and maintenance to the property.

Taxes

_____ \$11,266.27 in property taxes were paid on the subject property between 1974 and 2003. Mr. Watson makes a reimbursement claim for half of this total. The record, however, does not support his request. By his own admission, a portion of the taxes owed during Mr. Hooten's ownership, and after Mr. Hooten's death, were paid by Mr. Hooten's church. Even if we find that Mr. Watson acquired Mr. Hooten's right to contribution for any monies he paid in taxes, along with his independent right to contribution for any taxes Mr. Watson paid, the evidentiary problems persist. Although given the opportunity, Mr. Watson was unable to provide proof that either he, or Mr. Hooten had paid the taxes, or had reimbursed the church for same. In the absence of such proof, we cannot conclude that the evidence or the equities preponderate against the trial court's decision not to allow reimbursement for taxes paid on the property. However, the trial court did divide the existing tax liens equally between the parties. Ms. Ridley asserts that Mr. Watson should be solely responsible for these existing liens as well as for any penalties thereon. We disagree.

The trial court's decision concerning taxes is based upon its determination of the equities between the parties. Because Mr. Watson did not prove that either his funds, or Mr. Hooten's, were used to pay the taxes, he was not able to collect Ms. Ridley's *pro rata* share of the previously paid taxes. This determination, although correct under the law, works an advantage to Ms. Ridley in that she had at least a portion of her part of the taxes paid and did not have to reimburse Mr. Watson, the church, or anyone else. In light of this fact, it would be inequitable to charge Mr. Watson with the full amount of the tax liens and the penalties. In the interest of equity, we conclude that the trial court was correct in assessing one-half of the amount of the tax liens and the penalties thereon to Ms. Ridley.

Mortgages

Mr. Watson took out six loans and used the real estate as collateral for each one. The record clearly indicates that Ms. Ridley had no knowledge of these loans, was not a co-signer on any of the promissory notes or deeds of trust, and received no proceeds therefrom. Although the *Parker* case states that cotenants must equally contribute to the payment of encumbrances on the property, the actions by and equities of the cotenants must always be considered in determining how to distribute the debt on jointly owned property. “The common theme ... is that a cotenant must equally share both the burdens of land ownership as well as the benefits of the land ownership. If one cotenant bears a disproportionate share of the burden, the other cotenants must provide compensation. Alternatively, if one cotenant enjoys a disproportionate share of the benefits, the other cotenants must be compensated.” *Parker*, 206 S.W.3d at 5 (parenthetical omitted). Although the equities between the parties is the primary consideration in making the determination of the relative responsibilities between owners, one owner may be partially responsible for the sole action of another owner in encumbering a property if that owner has conceded the management of the property to the owner making the encumbrance. *See, e.g., Castleman Const. Co. v. Pennington*, 432 S.W.2d 669, 677 (Tenn. 1968). Here, there is no indication that Ms. Ridley condoned, or otherwise authorized, Mr. Watson’s use of the property to secure debt. In the absence of a finding of abandonment on the part of Ms. Ridley, which claim was specifically (and correctly) dismissed, we cannot conclude that Ms. Ridley tacitly approved these encumbrances. Our inquiry does not, however, end here. Regardless of the fact that Ms. Ridley did not approve these debts, if she received benefit from the proceeds of the loans, then, under *Parker*, she would be responsible to Mr. Watson for some portion of that benefit. The record, however, does not support such a finding. Aside from \$2,967 of the proceeds from the line of credit (i.e., the third loan) that were used for roof repair, there is no indication that Ms. Ridley received any benefit from these loans. Her *pro rata* share of the \$2,967 for roof work was satisfied in the trial court’s award of \$10,000 to Mr. Watson.

Rents

Ms. Ridley claims that she is entitled to one-half of the rents Mr. Watson allegedly collected from the parties who lived in the house during his ownership thereof. The record shows that Mr. Watson collected some \$18,750 in the years he had ownership of the property. Under *Parker*, a cotenant is entitled to rents only to the extent that the rental income exceeds the other owner’s interest in the property. *Id.* at fn. 2. Concerning the rental income, Mr. Watson testified that these funds were used for food, utilities, phone, and other household expenses. This testimony is uncontested. The amounts received by Mr. Watson average approximately \$525.00 per month. Taking into account expenditures for household necessities, we cannot conclude that the trial court erred in denying Ms. Ridley’s claim for one-half of the total rents as they do not exceed Mr. Watson’s one-half share.

Ms. Ridley also claims that she is entitled to rents based upon Mr. Watson’s sole use of the property. While the *Parker* Court explained that “a cotenant with sole possession of the property... must pay rent to the cotenants for the use and occupation of the property...,” *Parker*, 206 S.W.3d at fn. 2, this allowance is predicated upon the exclusion, by the sole possessor, of his or her cotenants from the property. *Id.* Here, there is no indication that Mr. Watson excluded Ms. Ridley

from the property. Ms. Ridley's absence from the property appears to be of her own choosing. Although she did not go so far as to abandon her interest in the property, there is no indication that she attempted to exercise her interest, and there is certainly no evidence that Mr. Watson worked to deny her that right. Consequently, Ms. Ridley is not entitled to rents for Mr. Watson's sole use of the property.

For the foregoing reasons, the order of the trial court is affirmed. Costs of this appeal are assessed one-half to the Appellant, Clemons Watson and his surety, and one-half to the Appellee, Ernestine C. Ridley, for which execution may issue if necessary.

J. STEVEN STAFFORD, JUDGE